

1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
3                   STATESVILLE DIVISION

4                   Civil Action No. 3:20-CV-00504-FDW-DSC

5                   CPI SECURITY SYSTEMS, INC.,                   )

)

6                   Plaintiff and Counterclaim Defendant)

)

7                   vs.                   )

)

8                   VIVINT SMART HOME, INC. f/k/a Mosaic                   )

9                   Acquisition Corp.; and LEGACY VIVINT                   )

10                  SMART HOME, INC. f/k/a Vivint Smart                   )

11                  Home, Inc.,                   )

)

12                  Defendants and Counterclaimants.                   )

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15                  Videotaped Remote Deposition of LAWRENCE DAVID KODACK  
16                  (Taken by Plaintiff and Counterclaim Defendant)

17                                  Durham, North Carolina

18                                  Wednesday, August 25, 2021

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22                                  Reported in Stenotype by

23                                  Lauren M. McIntee, RPR, CRR

24                                  Transcript produced by computer-aided transcription  
25                                  Job No. CS4771270

<div>Page 2</div> <div>1 APPEARANCES</div> <div>2 ON BEHALF OF THE PLAINTIFF/COUNTERCLAIM DEFENDANT:</div> <div>3 Eric J. Hobbs, Esquire (via Zoom)</div> <div>4 Shook, Hardy &amp; Bacon, LLP</div> <div>5 1660 17th Street, Suite 450</div> <div>6 Denver, Colorado 80202</div> <div>7 (303) 285-5300</div> <div>8 Ehobbs@shb.com</div> <div>9</div> <div>10 ON BEHALF OF THE DEFENDANTS/COUNTERCLAIMANTS:</div> <div>11 Gregory Herbert, Esquire (via Zoom)</div> <div>12 Greenberg Traurig, LLP</div> <div>13 450 South Orange Avenue, Suite 650</div> <div>14 Orlando, Florida 32801</div> <div>15 (407) 420-1000</div> <div>16 Herbertg@gtlaw.com</div> <div>17</div> <div>18 -and-</div> <div>19</div> <div>20 Matthew A. Steward, Esquire (via Zoom)</div> <div>21 Clyde, Snow &amp; Sessions</div> <div>22 201 South Main Street, Floor 13</div> <div>23 Salt Lake City, Utah 84111</div> <div>24 (801) 322-2516</div> <div>25 Mas@clydesnow.com</div> <div>26 ALSO PRESENT:</div> <div>27 DeAndrae Shivers, Videographer (via Zoom)</div> <div>28</div> <div>29 VIDEOTAPED REMOTE DEPOSITION OF LAWRENCE DAVID</div> <div>30 KODACK, a witness called on behalf of Plaintiff and</div> <div>31 Counterclaim Defendant, before Lauren M. McIntee,</div> <div>32 Registered Professional Reporter, Certified Realtime</div> <div>33 Reporter, and Notary Public, in and for the State of</div> <div>34 North Carolina, in Durham, North Carolina on Wednesday,</div> <div>35 August 25, 2021, commencing at 1:10 p.m.</div>	<div>Page 4</div> <div>1 THE VIDEOGRAPHER: All right. This is the</div> <div>2 beginning of the videotaped deposition of Larry</div> <div>3 Kodack in the matter of CPI Security Systems,</div> <div>4 Incorporated, versus Vivint Home -- or Smart Home,</div> <div>5 Incorporated, et al.</div> <div>6 Today's date is August 25th, 2021. And the</div> <div>7 time is 1:10 p.m. Counsel, please introduce</div> <div>8 yourselves, after which our court reporter will</div> <div>9 swear in the witness.</div> <div>10 MR. HOBBS: This is Eric Hobbs of the law</div> <div>11 firm of Shook, Hardy and Bacon, on behalf of the</div> <div>12 plaintiff, CPI Security Systems.</div> <div>13 MR. HERBERT: Good afternoon. This is</div> <div>14 Gregory Herbert with the law firm Greenberg Traurig,</div> <div>15 on behalf of the defendants. And also on the line</div> <div>16 is Mr. Matthew Steward with the law firm Clyde Snow,</div> <div>17 also on behalf of the defendants.</div> <div>18 LAWRENCE DAVID KODACK,</div> <div>19 having first been duly sworn, was examined</div> <div>20 and did testify as follows:</div> <div>21 EXAMINATION</div> <div>22 BY MR. HOBBS:</div> <div>23 Q. Well, good afternoon, Mr. Kodack. Are you</div> <div>24 able to hear me okay?</div> <div>25 A. Yes, I hear you fine. A lot of hollow --</div>
<div>Page 3</div> <div>1 INDEX OF EXAMINATIONS</div> <div>2 By Mr. Hobbs..... Page 4</div> <div>3 By Mr. Herbert..... Page 51</div> <div>4 By Mr. Hobbs..... Page 58</div> <div>5 By Mr. Herbert..... Page 60</div> <div>6</div> <div>7 INDEX OF EXHIBITS</div> <div>8</div> <div>9</div> <div>10</div> <div>11</div> <div>12</div> <div>13</div> <div>14</div> <div>15</div> <div>16</div> <div>17</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div>	<div>Page 5</div> <div>1 Q. Sure.</div> <div>2 A. -- in your -- in your location, but that's</div> <div>3 fine.</div> <div>4 Q. As you tried to give your answer to the</div> <div>5 swearing in, your audio cut out at least on my side a</div> <div>6 little bit. If we continue to have those -- those</div> <div>7 problems, we might take a break and have you connect by</div> <div>8 phone while also staying on the computer. There's a way</div> <div>9 to do that. But for now, we'll just see how things go.</div> <div>10 A. Okay.</div> <div>11 Q. Again, my name is Eric Hobbs. I'm one of the</div> <div>12 attorneys representing CPI Security Systems in this</div> <div>13 lawsuit. On -- also on the line is Mr. Greg Herbert.</div> <div>14 He's one of the attorneys for Vivint, who I think will</div> <div>15 be asking you questions on behalf of Vivint today.</div> <div>16 Let me first ask. Have you ever given a</div> <div>17 deposition before?</div> <div>18 A. No. Particularly, not a online deposition.</div> <div>19 That's a new phenomenon.</div> <div>20 Q. Well, it is for us as well. And we do</div> <div>21 appreciate you letting us virtually into your home. I</div> <div>22 know that doing this can be a time commitment on your</div> <div>23 behalf, and we appreciate your time in allowing us to</div> <div>24 connect this way.</div> <div>25 I'll go through just a couple ground rules we</div>

<p style="text-align: right;">Page 6</p> <p>1 go through with all witnesses just to help you</p> <p>2 understand how this process works. You notice we're</p> <p>3 connected over a Zoom connection. We're not sitting in</p> <p>4 the same room. That -- that makes the court reporter's</p> <p>5 job a little bit harder because what tends to happen on</p> <p>6 this platform is, the attorneys and the witness all tend</p> <p>7 to talk over each other. As good as the technology is,</p> <p>8 there's about a one-second lag.</p> <p>9 So the first thing we always ask is if you</p> <p>10 could allow either myself or Mr. Herbert to finish our</p> <p>11 question before you begin an answer, that will allow the</p> <p>12 court reporter to get a clean transcript. Can you do</p> <p>13 that?</p> <p>14 A. I will try.</p> <p>15 Q. I'm also known to ask some pretty bad</p> <p>16 questions sometimes. I think it's a hazard of the job</p> <p>17 being an attorney, but I do do it sometimes. If I ask</p> <p>18 you a question and it doesn't make sense, perfectly okay</p> <p>19 to say "I don't understand," and I'll try to rephrase</p> <p>20 it. Can you do that?</p> <p>21 A. I will attempt that.</p> <p>22 Q. Okay. There may be times today where one of</p> <p>23 the attorneys asks a question, the other attorney states</p> <p>24 an objection. And you will notice there are many people</p> <p>25 on the Zoom today, but one of the people we do not have</p>	<p style="text-align: right;">Page 8</p> <p>1 pronouncing that correctly?</p> <p>2 A. That's -- that's as good as you can get.</p> <p>3 That's what -- that's what my father passed down to me.</p> <p>4 Q. Okay. And do you go by Larry or Lawrence?</p> <p>5 A. Yes.</p> <p>6 Q. Both?</p> <p>7 A. Both or either.</p> <p>8 Q. Okay. Well, I'll refer to you as Mr. Kodack</p> <p>9 this morning. If we were in a less formal setting, I'd</p> <p>10 be more than happy to call you by your first name, but</p> <p>11 although we're -- we're talking over Zoom, this</p> <p>12 testimony is as if you're in court. So I'll call you</p> <p>13 Mr. Kodack, if that's okay.</p> <p>14 What is your current address?</p> <p>15 A. 302 Whitney Lane, Durham, North Carolina</p> <p>16 27713.</p> <p>17 Q. How long have you been at that address?</p> <p>18 A. Since 2004. We built the house.</p> <p>19 Q. Have you always lived in North Carolina?</p> <p>20 A. No.</p> <p>21 Q. Where were you before you moved to the</p> <p>22 address you're at now?</p> <p>23 A. I've been in one, two, three, four, I can</p> <p>24 think of five other addresses locally. I grew up in</p> <p>25 Asheville, North Carolina. I was born in Toronto,</p>
<p style="text-align: right;">Page 7</p> <p>1 is a judge. So I know it can be kind of awkward, but</p> <p>2 typically in that scenario, if a question is asked, the</p> <p>3 other attorney makes an objection, you can then begin</p> <p>4 answering the question that was asked after the</p> <p>5 objection is done. That objection is just for the</p> <p>6 record. Does that make sense?</p> <p>7 A. Gotcha.</p> <p>8 Q. Okay. We -- we might remind you as we get</p> <p>9 under way. But the last thing I always say is, I have a</p> <p>10 tendency to reference the jury, and you're -- you may be</p> <p>11 looking around wondering where is the jury. Obviously,</p> <p>12 we do not have the jury on the line today. The jury in</p> <p>13 this case has not yet been assembled. The trial date is</p> <p>14 in November. But this video may ultimately get played</p> <p>15 to the jury in this case, and that's why I say that.</p> <p>16 Does that make sense?</p> <p>17 A. By all means.</p> <p>18 Q. Okay.</p> <p>19 A. Very reasonable.</p> <p>20 Q. Let me first have you just start off by</p> <p>21 spelling your full name for the record.</p> <p>22 A. L-A-W-R-E-N-C-E, K-O-D-A-C-K.</p> <p>23 Q. And --</p> <p>24 A. Middle name David, D-A-V-I-D.</p> <p>25 Q. And I've been saying "Mr. Kodack." Am I</p>	<p style="text-align: right;">Page 9</p> <p>1 Canada. I lived in New York for -- briefly in New York</p> <p>2 City.</p> <p>3 Q. And what brought you to Durham?</p> <p>4 A. Housing. Needed to build -- needed a new</p> <p>5 house that would accommodate a then-wife who was</p> <p>6 disabled, incapacitated, and we needed specific</p> <p>7 requirements, no second floor and some things like that.</p> <p>8 So we built this house.</p> <p>9 Q. Does your wife currently live with you today?</p> <p>10 A. She is deceased. I have -- she died in 2009,</p> <p>11 April Fools' Day, but -- and I remarried in 2016.</p> <p>12 Q. Well, first, let me say my condolences on the</p> <p>13 passing of your former wife. What is the name of</p> <p>14 your -- your new wife that you remarried?</p> <p>15 A. Andree Allen.</p> <p>16 Q. And that must be, I see that name reflected</p> <p>17 at the bottom of your screen. That must be why</p> <p>18 that's --</p> <p>19 A. This is actually her computer.</p> <p>20 Q. Okay.</p> <p>21 A. We used it. Mine was a very ancient computer</p> <p>22 that died, and we put it to rest.</p> <p>23 Q. Let me ask, are you currently employed?</p> <p>24 A. I am currently retired, and I retired in</p> <p>25 2019. I figured at age 70, I better get out before they</p>

<p style="text-align: right;">Page 10</p> <p>1 carry me out in a basket.</p> <p>2 Q. Well, congratulations. What -- where did you</p> <p>3 retire from?</p> <p>4 A. I retired from Duke University Medical</p> <p>5 Center. I was a biomed tech in the last part of my</p> <p>6 career.</p> <p>7 Q. How long did you hold that position for?</p> <p>8 A. Oh, 20 years.</p> <p>9 Q. Did you assist with medical research, or what</p> <p>10 exactly was your role?</p> <p>11 A. The earlier part of my career, I did medical</p> <p>12 research. This segment of my career -- I've lost you</p> <p>13 online. You no longer are -- are featured. But anyhow,</p> <p>14 I did, this part of my career, I fixed their broke</p> <p>15 machines.</p> <p>16 MR. HOBBS: Okay. If I could have the</p> <p>17 videographer just take us back to the gallery view,</p> <p>18 I think that would assist the witness, especially as</p> <p>19 I get into sharing my screen.</p> <p>20 THE VIDEOGRAPHER: The witness can hit the</p> <p>21 gallery view button. I -- I can't hit that for him.</p> <p>22 MR. HOBBS: Okay. Some -- something --</p> <p>23 THE WITNESS: Locate it for me.</p> <p>24 MR. HOBBS: It's up at the top right of your</p> <p>25 screen, Mr. Kodack. It should show as a --</p>	<p style="text-align: right;">Page 12</p> <p>1 A. Yes, indeed.</p> <p>2 Q. Where from and in what field?</p> <p>3 A. Duke University. And when did I do that?</p> <p>4 2007, biochemistry.</p> <p>5 Q. That's when you graduated from --</p> <p>6 A. Yes.</p> <p>7 Q. -- with the PhD program?</p> <p>8 And then you mentioned an OB-GYN program?</p> <p>9 A. I did fetal physiology in OB-GYN for</p> <p>10 25 years.</p> <p>11 Q. Okay. Can you explain what generally you did</p> <p>12 in that practice?</p> <p>13 A. Well, we looked at cardiotoxic drugs in fetal</p> <p>14 sheep, a model that is just now coming into use.</p> <p>15 Vanderbilt has a program where they attempt to treat</p> <p>16 fetal anomalies or fetal cardiac problems in utero,</p> <p>17 particularly in multiple gestations.</p> <p>18 Q. It sounds like quite complex work.</p> <p>19 A. It was very complex. We did work in fetal</p> <p>20 sheep, which gave us cardiotoxic drugs, drugs that</p> <p>21 affected the rate and strength of the fetal heart in a</p> <p>22 sheep model by instrumenting the fetus in a way that you</p> <p>23 could never or would never allow in human to get</p> <p>24 information at all. And it's taken this long since that</p> <p>25 work was done in, mostly in the '70s and early '80s, to</p>
<p style="text-align: right;">Page 11</p> <p>1 THE WITNESS: Remove spotlight?</p> <p>2 MR. HOBBS: At the top right, if you hover</p> <p>3 over, there's kind of a --</p> <p>4 THE WITNESS: There's -- there's your</p> <p>5 picture, Eric.</p> <p>6 THE VIDEOGRAPHER: It's -- it says "view."</p> <p>7 And if you hover over that, it will drop down and</p> <p>8 you'll see "gallery view."</p> <p>9 THE WITNESS: View? Gallery, there we are.</p> <p>10 Okay. Got it.</p> <p>11 BY MR. HOBBS:</p> <p>12 Q. Okay. Are you able to see me okay now?</p> <p>13 A. Yeah. You now occupy the screen.</p> <p>14 Q. So you were just describing your role in the</p> <p>15 Duke University medical lab. What is the highest level</p> <p>16 of education you attained in order to become or I guess</p> <p>17 to hold that position?</p> <p>18 A. That particular position required a two-year</p> <p>19 community college degree. So I stepped back from a PhD</p> <p>20 in biochemistry and went on to, continued with my career</p> <p>21 when it wasn't reasonable to stay on in the OB-GYN</p> <p>22 department as a researcher.</p> <p>23 Q. Okay. Well, that -- that prompts a couple</p> <p>24 other questions I have for you, then. Have you attained</p> <p>25 a PhD?</p>	<p style="text-align: right;">Page 13</p> <p>1 be able to apply it to human fetuses.</p> <p>2 Q. And that sounds like it -- it is being</p> <p>3 applied today?</p> <p>4 A. Yeah, it is. It's -- it's -- it's in its</p> <p>5 infancy in human realm. Because sheep are farm animals,</p> <p>6 the legal aspect of that is much easier to -- to work</p> <p>7 now.</p> <p>8 Q. Sure. You've mentioned a prior marriage and</p> <p>9 a current marriage. Do you have any children?</p> <p>10 A. Yes, indeed. I have two of my own and one</p> <p>11 from the marriage who died in 2009.</p> <p>12 Q. If you don't mind me -- me asking, how old</p> <p>13 are your children?</p> <p>14 A. Oh, late 40s, early to mid 50s.</p> <p>15 Q. And you mentioned retiring, if I remember</p> <p>16 your testimony correctly, at the age of 70. How old are</p> <p>17 you today?</p> <p>18 A. 72.</p> <p>19 Q. And besides your current wife, Andree, am I</p> <p>20 pronouncing that correctly?</p> <p>21 A. I beg your pardon. Repeat.</p> <p>22 Q. What is -- what is your present wife's name?</p> <p>23 A. Andree, yes.</p> <p>24 Q. Andree. Besides Andree, does anybody else</p> <p>25 live with you in the home?</p>

<p style="text-align: right;">Page 14</p> <p>1 A. No. We have a dog. She thinks she owns it.</p> <p>2 Q. What kind of dog?</p> <p>3 A. She's a Labradoodle. She's, you know, she's</p> <p>4 a dog. She's 15 years old, and so mostly she sleeps and</p> <p>5 her responsibility is to guard the floor. And if the</p> <p>6 floor is missing when we come back from somewhere, we</p> <p>7 know she's failed.</p> <p>8 Q. Sure. I kind of want to shift gears a little</p> <p>9 bit and talk to you about the -- your alarm system in</p> <p>10 your home.</p> <p>11 A. Yes.</p> <p>12 Q. Let me first ask. Do you currently have an</p> <p>13 alarm system installed in your home?</p> <p>14 A. Yes, we do. We currently have the alarm</p> <p>15 system from CPI. The house was built with a Brinks</p> <p>16 system in it. We never activated the Brinks system and</p> <p>17 immediately went to C -- explored and went to CPI and</p> <p>18 said, what can you do? And we put in a -- and then was</p> <p>19 as good a system as they had, and we kept that. I</p> <p>20 seldom use it, but it's there.</p> <p>21 Q. So you mentioned a couple things in terms of</p> <p>22 doing some research and -- and choosing an alarm</p> <p>23 company. What -- what ultimately led you to choose CPI</p> <p>24 as your security provider?</p> <p>25 A. The predominant factor was local and promise</p>	<p style="text-align: right;">Page 16</p> <p>1 here, if I'm able to share my screen.</p> <p>2 A. Yeah.</p> <p>3 Q. Are you able to see that okay?</p> <p>4 A. Oh. Oh, it was 2003, then, obviously.</p> <p>5 Q. Well, it sounds like -- so you can see, I've</p> <p>6 marked this document as Exhibit 1. Do you see that down</p> <p>7 there?</p> <p>8 A. You didn't spell my name correctly.</p> <p>9 Q. Okay. Well, you do see where I marked it as</p> <p>10 Exhibit 1, though?</p> <p>11 A. Yeah.</p> <p>12 Q. Okay. And then up at the top, just to ask</p> <p>13 you, do you recognize this document?</p> <p>14 A. It's -- I recognize the signatures.</p> <p>15 Q. Okay. The signatures down at the bottom,</p> <p>16 whose signatures are those?</p> <p>17 A. I don't have any idea of those. The ones in</p> <p>18 the middle, mine and Randy's.</p> <p>19 Q. Okay. And who is Randy?</p> <p>20 A. Randy was my second wife.</p> <p>21 Q. And you see it's dated January 16th, 2003?</p> <p>22 A. Yeah. So it looks like we occupied this</p> <p>23 house in -- in 2003, in early 2003. My mistake on that.</p> <p>24 Q. No problem. That was some years ago. Let</p> <p>25 me -- I'm going to pull up another document that I'm</p>
<p style="text-align: right;">Page 15</p> <p>1 of rapid response.</p> <p>2 Q. And was -- do you recall when you had that</p> <p>3 system first installed in your home?</p> <p>4 A. Very shortly after occupying the home.</p> <p>5 Q. I'm going to pull up --</p> <p>6 A. Within a month -- within a month. Maybe</p> <p>7 month and a half.</p> <p>8 Q. Okay. And when did you say you first moved</p> <p>9 into that home?</p> <p>10 A. Would be 2004.</p> <p>11 Q. I'm going to pull up, if you'll give me just</p> <p>12 a moment here, what I'm going to mark -- I'm going to</p> <p>13 mark this as Exhibit 1.</p> <p>14 A. I think that's what my memory is from back</p> <p>15 there, that that's when we did it.</p> <p>16 Q. Okay.</p> <p>17 A. You probably have the records from CPI. I</p> <p>18 tried to call them and discuss with them what's going</p> <p>19 on, and I kept getting a runaround. So I went ahead and</p> <p>20 said the heck with it. I asked for their legal</p> <p>21 department and never got anyone to respond.</p> <p>22 (Whereupon, Exhibit 1 was marked for</p> <p>23 identification.)</p> <p>24 BY MR. HOBBS:</p> <p>25 Q. Okay. I'm going to pull up on the screen</p>	<p style="text-align: right;">Page 17</p> <p>1 going to mark as Exhibit 2.</p> <p>2 (Whereupon, Exhibit 2 was marked for</p> <p>3 identification.)</p> <p>4 BY MR. HOBBS:</p> <p>5 Q. So I've pulled up what I've marked as</p> <p>6 Exhibit 2. Do you see that at the bottom?</p> <p>7 A. Yes, indeed. I'm just looking to see what</p> <p>8 the date is on it, because that's the bottom. 5/6 --</p> <p>9 Q. I'm going to zoom in for you on the bottom</p> <p>10 left because I know it's hard to see. But there's --</p> <p>11 A. 5/8/2010.</p> <p>12 Q. And do you see a signature there as well?</p> <p>13 A. Yeah, that's -- yes, indeed.</p> <p>14 Q. Okay.</p> <p>15 A. And I did that obviously.</p> <p>16 Q. Do you recall what the circumstances were</p> <p>17 that ultimately led you to sign this new paperwork with</p> <p>18 CPI?</p> <p>19 A. I think we went from an analogue system to</p> <p>20 a -- from an analogue system on the telephone line to a</p> <p>21 digital system with an enclosed cell phone.</p> <p>22 Q. Okay. And I'm just going to focus in on kind</p> <p>23 of the top half of the document.</p> <p>24 A. Okay.</p> <p>25 Q. There's some handwriting there in the middle</p>

<p style="text-align: right;">Page 18</p> <p>1 that says "upgrade."  2 A. Yeah.  3 Q. Do you recall what work CPI did on your  4 system as a part of your signing this -- this updated --  5 A. No, they pulled the control box out, replaced  6 it with a direct dial cell phone -- cell phone-like  7 device that connected and tested the system, and it  8 worked.  9 Q. Okay. I'm going to pull down that document.  10 So you've testified, with reference  11 Exhibit 2, that you signed it in May of 2010. Do you  12 recall whether CPI did any other updates or changes to  13 your equipment after that time?  14 A. One other time. 2000- -- let me grab my  15 notes because I -- I did a quick note on that. Let me  16 see when that was. February of 2020, they -- CPI came  17 in and changed the cell phone on the board, the direct  18 dial. It really isn't a cell phone. It's a dedicated  19 call system, but they changed it from a 2 or 3 to a  20 Generation 4 cell phone. That really wasn't the  21 upgrade. The -- the network was being retired.  22 Q. Okay. It sounds like maybe you're referring  23 to 2 or 3G, like --  24 A. Yeah, 2G.  25 Q. -- cell phones work off of?</p>	<p style="text-align: right;">Page 20</p> <p>1 an outside alarm light; meant if it was medically  2 activated and when they tested it, it sets off a  3 flashing light so that if EMS or fire was responding,  4 their -- it is a light outside that is on and it's  5 flashing and might give them a few extra seconds to  6 respond.  7 In town, that isn't critical, but as a  8 volunteer ambulance paramedic, I very much -- in the  9 middle of the night when you go out into the county and  10 somebody calls -- somebody pages -- well, on a call and  11 you're looking for a particular house number that's  12 almost impossible to see at night, oh, we'll turn on the  13 porch light and that -- that really doesn't help because  14 everybody turns on their porch light when they hear a  15 siren going by.  16 Q. So it sounds like that feature was important  17 to you with your --  18 A. Yeah, that was an important feature, and that  19 was about all we added to their basic program.  20 Q. At one point, did you also get a key fob to  21 turn the alarm system on and off?  22 A. I ordered that, and I don't know when.  23 Q. Okay.  24 A. I ordered -- it came with one remote, and  25 then I got a second remote. I'm not sure which one of</p>
<p style="text-align: right;">Page 19</p> <p>1 A. The original was put in as a 2G network, yes.  2 Thank you for the correction. And it went to a 4, is  3 what they said I currently have.  4 Q. Other than changing the 2 or 3G to a 4 in  5 terms of a cellular connection, did the -- did the  6 equipment itself change in your home?  7 A. Well, that it was part of the circuit board.  8 Q. Okay.  9 A. So -- so I don't quite know how to answer  10 that question.  11 Q. Sure.  12 A. It is -- you know, changing a component on a  13 circuit board is not the original. And from my  14 background in biomed, it's not the same thing.  15 Q. I -- I understand and appreciate that precise  16 answer. Let me ask a better question. It sounds like  17 they changed maybe a part in the motherboard that  18 controls your alarm in your home; is that fair?  19 A. Fair enough.  20 Q. Okay.  21 A. That's close enough.  22 Q. Can you describe for the jury what other  23 alarm equipment CPI had installed in your home as a part  24 of the system?  25 A. They had motion -- a single motion sensor and</p>	<p style="text-align: right;">Page 21</p> <p>1 the two I still have and -- and am using. I have one.  2 Q. Okay. So it sounds like you've been a  3 customer of CPI for many years; is that fair?  4 A. Yes, indeed. And...  5 Q. Over the course of having CPI's alarm system  6 in your home since 2003, have you found CPI's alarm  7 system to be reliable?  8 A. Yes. The few times we've used it, it's  9 non-functioned perfectly; I mean, it wasn't necessary.  10 But it is good to have there. It was good particularly  11 when Randy with only one leg had the -- the safety, and  12 I had redundant fire alarm -- alarm capability and that  13 sort of thing.  14 Q. Did the system give you a sense of security?  15 A. It gave my wife a sense of security. I was  16 pretty calm and pretty relaxed with the, just having the  17 house and locking doors.  18 Q. And --  19 A. The neighbors are good. Several times when  20 we were on vacation or out of the count- -- or out of  21 the country, in fact, we'd get a phone call from the  22 neighbor and, there's a car in your driveway, or  23 something. And, hey.  24 Q. That's -- that's a good neighbor.  25 A. Yeah, that's a good neighbor.</p>

<p style="text-align: right;">Page 22</p> <p>1 Q. Let me ask, as a part of providing this</p> <p>2 security system in your home, did CPI also provide you a</p> <p>3 yard sign or any stickers --</p> <p>4 A. Yes, indeed.</p> <p>5 Q. -- outside?</p> <p>6 A. And the yard sign is currently still hiding</p> <p>7 in the bushes. It's still up front, almost visible.</p> <p>8 Q. Okay. You say "almost visible"?</p> <p>9 A. Yeah, we -- we've replaced it once over the</p> <p>10 length of time. I asked for another one, and they</p> <p>11 promptly delivered me one. And I said, thank you.</p> <p>12 Q. Would that be visible to somebody approaching</p> <p>13 your home, coming --</p> <p>14 A. Yes, indeed.</p> <p>15 Q. Did they give you any stickers or anything</p> <p>16 else, or was it just --</p> <p>17 A. They offered them. We never bothered for the</p> <p>18 windows.</p> <p>19 Q. Okay. I want to turn again and kind of focus</p> <p>20 your attention on your interactions with another alarm</p> <p>21 company. You understand that's why you're here to</p> <p>22 testify, correct?</p> <p>23 A. Yeah, I have no idea what this is about</p> <p>24 because I don't know anything about the Vivint.</p> <p>25 Q. Okay.</p>	<p style="text-align: right;">Page 24</p> <p>1 THE WITNESS: Yeah.</p> <p>2 MR. HERBERT: Mr. Hobbs and I get along</p> <p>3 pretty fine so far.</p> <p>4 THE WITNESS: Yeah.</p> <p>5 MR. HERBERT: But I will interpose an</p> <p>6 objection. And generally speaking, you can then</p> <p>7 answer if you -- if you understand the question. If</p> <p>8 you need it to be repeated or rephrased or</p> <p>9 something, then you can ask Mr. Hobbs to do that.</p> <p>10 That's up to you.</p> <p>11 A. I have no information about this contact</p> <p>12 in -- in 2018, in July of 2018. I'm not aware of any</p> <p>13 change in my plan. I have no knowledge.</p> <p>14 BY MR. HOBBS:</p> <p>15 Q. Okay. Let me ask you this. July of 2018 was</p> <p>16 a few years ago; is that fair?</p> <p>17 A. Yeah.</p> <p>18 Q. Okay.</p> <p>19 A. But -- but probably CPI has better records of</p> <p>20 that than I do. If I was cut off from their network or</p> <p>21 something and they had to go chase me and get me back</p> <p>22 on, I was not aware of it. My wife may have handled</p> <p>23 that.</p> <p>24 Q. Okay. Just a couple more questions in terms</p> <p>25 of your -- your memory. I just want to be clear whether</p>
<p style="text-align: right;">Page 23</p> <p>1 A. Yeah.</p> <p>2 Q. And before I go any further, is that the name</p> <p>3 of the alarm company that you had an interaction with?</p> <p>4 A. I have never had any interaction with them to</p> <p>5 my knowledge.</p> <p>6 Q. Okay. Well, I want to focus your attention,</p> <p>7 I guess, on July of 2018. Do you recall being</p> <p>8 approached by a salesperson from Vivint on that date?</p> <p>9 MR. HERBERT: Object to form.</p> <p>10 THE WITNESS: Repeat your comment.</p> <p>11 MR. HERBERT: We were talk- -- Mr. Kodack,</p> <p>12 this is Greg Herbert. I --</p> <p>13 THE WITNESS: Yeah.</p> <p>14 MR. HERBERT: I might have an occasion to</p> <p>15 interpose an objection to Mr. Hobbs' question.</p> <p>16 THE WITNESS: Yeah, and that's what you did.</p> <p>17 Okay.</p> <p>18 MR. HERBERT: Right. And so if I object,</p> <p>19 that's -- I'm objecting --</p> <p>20 THE WITNESS: Okay.</p> <p>21 MR. HERBERT: -- to the form of the question</p> <p>22 or some reason regarding my view of the question.</p> <p>23 THE WITNESS: So I'll wait and let you two</p> <p>24 argue it out, and we'll go from there.</p> <p>25 MR. HERBERT: Hopefully, we won't argue.</p>	<p style="text-align: right;">Page 25</p> <p>1 at present you have any memory of a Vivint sales</p> <p>2 representative coming by your home and interacting with</p> <p>3 you in July of 2018?</p> <p>4 MR. HERBERT: Object to the form.</p> <p>5 A. I have no memory of -- of that, of</p> <p>6 interacting with anyone from another company. My sign</p> <p>7 is obvious and sits in the front yard.</p> <p>8 BY MR. HOBBS:</p> <p>9 Q. Okay. Over the course of having CPI's system</p> <p>10 in your home, did you ever make phone calls to CPI to</p> <p>11 talk to them about your alarm services?</p> <p>12 A. Only for the remote. That's the only time</p> <p>13 I've had any direct phone conversations with them.</p> <p>14 Maybe a couple of times to change routing on my payment,</p> <p>15 but, you know, on my -- my monthly payment. But other</p> <p>16 than that, no, I have not had any interaction with them.</p> <p>17 Every once in a while, they call and we test the system</p> <p>18 and I'd have to remind them to reset the lamp, the</p> <p>19 strobe lamp outside.</p> <p>20 Q. When you call CPI, do you understand whether</p> <p>21 your phone calls are recorded?</p> <p>22 A. No, I do not. They may well record it. It</p> <p>23 is not -- no warning comes up and suggests that this may</p> <p>24 be recorded.</p> <p>25 Q. If I represented to you that CPI received a</p>

<p style="text-align: right;">Page 26</p> <p>1 phone call from you in July of 2018 to report a  2 interaction you had with another sales representative  3 from Vivint, would that refresh your recollection at all  4 in terms of that incident?  5 A. No, I didn't.  6 MR. HERBERT: Object to form.  7 A. I'm completely blank on that, that incident.  8 I'm sorry I'm not of any help to you, and maybe I'm not  9 of help to the opposing lawyer.  10 BY MR. HOBBS:  11 Q. Okay. I'm going to pull up what I'm going to  12 designate Exhibit 3, if you'll --  13 A. All right.  14 Q. -- give me just a moment here.  15 So what I'm going to do is, for the record,  16 this is an audio recording, Bates stamped CPI 054. It  17 totals 5 minutes and 43 seconds. Mr. Kodack, what I'm  18 going to do is, I'm going to play just a short segment  19 of this and then ask you a couple questions.  20 A. Okay.  21 Q. I'm going to share my computer audio and the  22 first question will be, is whether you can actually hear  23 the sound. But let me play a segment real quick.  24 MR. HERBERT: Before you do that, Mr. Hobbs,  25 I'm just going to note an objection to the -- the</p>	<p style="text-align: right;">Page 28</p> <p>1 CALLER: We just had a salesman at the door,  2 he says he's not a salesman, but from Vivint saying  3 that he is prescreening for a new entry panel  4 because they're claiming that our cell phone system  5 here doesn't operate under all conditions and that  6 his is better. I just didn't know whether that's --  7 they say they work with you. I'm not aware of  8 anything of that nature and didn't get a preletter  9 from you guys or anybody. So I was just curious as  10 to what's going on.  11 (Audio recording paused.)  12 BY MR. HOBBS:  13 Q. So I've paused that at 55 seconds into the  14 recording. Mr. Kodack, were you able to hear that  15 segment?  16 A. Yes, by all means. And that's consistent  17 with the way I generally operate. And I'm pretty direct  18 with, what do I do with this? Just like first thing I  19 did after I spoke with the attorney from your side in --  20 earlier, before. I called CPI and sent them a copy of  21 the document I had, so they've got the subpoena I was  22 issued, and asked their legal department to respond.  23 They did not. You are the first response I have.  24 Q. Okay.  25 MR. HERBERT: Let me -- I'm sorry.</p>
<p style="text-align: right;">Page 27</p> <p>1 use or introduction of an exhibit, improper  2 foundation. And object to the form of the question.  3 BY MR. HOBBS:  4 Q. Mr. Kodack, I'm going to play the first kind  5 of 10 seconds of this, then ask you a couple questions.  6 A. Okay.  7 Q. Subject to the same objections, of course.  8 MR. HERBERT: Thank you.  9 (Audio recording begins.)  10 CPI REPRESENTATIVE: CPI Security, this is  11 Dale. How may I assist you today?  12 CALLER: Lawrence Kodack, 302 Whitney Lane,  13 Durham, North Carolina.  14 (Audio recording paused.)  15 BY MR. HOBBS:  16 Q. So I've just paused that at 11 seconds in.  17 Mr. Kodack, did you -- were you able to hear that okay?  18 A. I heard it fine. That's my voice.  19 Q. Okay.  20 A. Obviously me.  21 Q. And was that your address that you provided?  22 A. Yes.  23 Q. Okay. I'm going to play just another segment  24 and then ask you another couple questions.  25 (Audio recording begins.)</p>	<p style="text-align: right;">Page 29</p> <p>1 Mr. Hobbs, just -- sorry to interrupt. Just  2 quickly, can I just have a standing objection to any  3 questions related to the exhibit that you're  4 discussing?  5 THE WITNESS: Okay.  6 MR. HOBBS: And this is for the record,  7 Mr. Kodack. I'll come back and ask you a couple  8 questions.  9 Greg, I'm fine with that. If I could ask you  10 to just articulate on the record what the standing  11 objection is. I'd like to, I guess, respond  12 briefly.  13 MR. HERBERT: Okay. Well, I'm objecting to  14 the form of the question, the exhibit as an improper  15 foundation. Also contains hearsay. And I object to  16 the form of any questions that have been asked about  17 it, and also move to strike the last response as  18 nonresponsive to the question posed.  19 MR. HOBBS: Okay. As to the hearsay  20 objection, it's CPI's position that this recording  21 would fall under the hearsay exception of 803.5,  22 recorded recollection. The witness has testified  23 that he has no present memory of the substance of  24 this interaction, which it's CPI's position is  25 reflected on the audio recording. And so I will,</p>



<p style="text-align: right;">Page 30</p> <p>1 through further questions, attempt to lay the 2 foundation under 803.5, but it's first and foremost 3 CPI's position that it's admissible under 803.5. 4 In addition, it's CPI's position that this is 5 not hearsay because the recording is not being 6 offered to prove the truth of any matter asserted, 7 but rather that the words were said. 8 MR. HERBERT: Right. And Mr. Hobbs -- I'm 9 sorry, are you finished? 10 MR. HOBBS: I am. 11 MR. HERBERT: Okay. And I don't want to go 12 back and forth with you and waste Mr. Kodack's time, 13 but just a brief response. 14 And in addition, I would object to the 15 relevance of the exhibit and the line of questioning 16 since, to the extent that the document is 17 authenticated and does have a foundation and to the 18 extent that your position on it is upheld, the 19 statements on the -- on the exhibit clearly indicate 20 that the sales representative identified himself as 21 being from Vivint and, therefore, there cannot be 22 any grounds for confusion. And therefore, this 23 exhibit would be irrelevant to the claims asserted 24 in this case which relate to alleged consumer 25 confusion.</p>	<p style="text-align: right;">Page 32</p> <p>1 Q. Okay. And did you recognize this recording 2 as a call you made to CPI's customer service department? 3 A. Yes, I must have because it's my voice. 4 Q. And on the -- the segment we just listened 5 to, you were reporting an interaction you had with a 6 Vivint sales representative; is that fair? 7 A. To the best of my knowledge, yes. 8 Q. Okay. As you listened to that recording here 9 today, does that refresh your recollection at all in 10 terms of what happened? 11 MR. HERBERT: I've got to object, interpose 12 an objection to the form of the question. I want to 13 get clear on the record whether you're asking the 14 witness, does this refresh his recollection of that 15 telephone call or does it refresh his recollection 16 of whatever events are purportedly described or -- 17 or referenced in the call? 18 BY MR. HOBBS: 19 Q. Well, let me ask both those questions, 20 Mr. Kodack. First off, listening to this recording, 21 does that refresh your recollection as to making a phone 22 call to CPI to report this incident? 23 MR. HERBERT: Same objection. 24 A. No, it does not refresh my memory of that. I 25 do not remember that call. That's consistent with my</p>
<p style="text-align: right;">Page 31</p> <p>1 BY MR. HOBBS: 2 Q. Okay. So Mr. Kodack, subject to all those 3 objections and the standing objection I have granted to 4 Mr. Herbert, I'd like to go back and I'm going to play 5 this segment of the recording we just listened to again, 6 which is from 11 seconds through 55 seconds, and then 7 I'd like to ask you a couple questions. If you could 8 just listen in, please. 9 (Audio recording begins.) 10 CALLER: We just had a salesman at the door, 11 he says he's not a salesman, but from Vivint saying 12 that he is prescreening for a new entry panel 13 because they're claiming that our cell phone system 14 here doesn't operate under all conditions and that 15 his is better. I just didn't know whether that's -- 16 they say they work with you. I'm not aware of 17 anything of that nature and didn't get a preletter 18 from you guys or anybody. So I was just curious as 19 to what's going on. 20 (Audio recording paused.) 21 BY MR. HOBBS: 22 Q. So again, I -- I paused that at 54 seconds. 23 Mr. Kodack, subject to the objections already stated, 24 again, was -- did you recognize that voice as your own? 25 A. Yes, indeed, I did.</p>	<p style="text-align: right;">Page 33</p> <p>1 own method of dealing with salesmen at the door. 2 BY MR. HOBBS: 3 Q. Okay. My follow-up question to that would 4 be, I understand you've testified it does not refresh 5 your recollection of making the call, but as you 6 listened to the recording that we've just listened to, 7 do you have any reason to dispute that that is you 8 making this report to CPI? 9 A. No -- 10 MR. HERBERT: Same objection. 11 A. No reason to -- no reason to object that that 12 was -- that was my voice. 13 BY MR. HOBBS: 14 Q. Okay. Now -- 15 A. -- my operation. 16 Q. The other question I wanted to ask in terms 17 of refreshing your recollection is, does listening to 18 this recording refresh your recollection of actually 19 having an interaction with this Vivint sales 20 representative? 21 MR. HERBERT: Same objection. 22 A. No, it does not. I have no concept of who or 23 what he looked like or anything. 24 BY MR. HOBBS: 25 Q. And same follow-up question. As you listened</p>

<p style="text-align: right;">Page 34</p> <p>1 to this recording, do you have any reason to dispute</p> <p>2 that when you reported this to CPI, you were reporting</p> <p>3 what had recently happened to you?</p> <p>4 MR. HERBERT: Object to the form.</p> <p>5 BY MR. HOBBS:</p> <p>6 Q. You can answer.</p> <p>7 A. Oh, I have no reason to doubt its veracity.</p> <p>8 Q. Okay. I want to back up the recording and</p> <p>9 just play -- I'm going to back it up to 45 or to</p> <p>10 40 seconds and play a 15-second segment and then ask you</p> <p>11 another question.</p> <p>12 (Audio recording begins.)</p> <p>13 CALLER: -- better. I just didn't know</p> <p>14 whether that's -- they say they work with you. I'm</p> <p>15 not aware of anything of that nature and didn't get</p> <p>16 a preletter from you guys or anybody. So I was just</p> <p>17 curious as to what's going on.</p> <p>18 (Audio recording paused.)</p> <p>19 BY MR. HOBBS:</p> <p>20 Q. So Mr. Kodack, in that segment I played,</p> <p>21 you're relaying to the CPI customer service</p> <p>22 representative that the Vivint representative had stated</p> <p>23 that they worked with CPI. Did you hear that?</p> <p>24 MR. HERBERT: Object to form. Leading,</p> <p>25 mischaracterizes the testimony.</p>	<p style="text-align: right;">Page 36</p> <p>1 recollection of why you were reaching out to CPI on this</p> <p>2 day?</p> <p>3 MR. HERBERT: Object to form.</p> <p>4 A. Repeat your question. I'm just...</p> <p>5 BY MR. HOBBS:</p> <p>6 Q. Do you have any independent recollection</p> <p>7 sitting here today as to why you were making this call</p> <p>8 to CPI?</p> <p>9 MR. HERBERT: Same objection.</p> <p>10 A. It's consistent with my personality and my</p> <p>11 follow-through on any of the sales, fly-by-night sales</p> <p>12 people who come around through the neighborhood. I</p> <p>13 consistently ask them whether they have a city permit to</p> <p>14 be here. I ask them to produce that. If they don't, I</p> <p>15 shut the door in their face.</p> <p>16 BY MR. HOBBS:</p> <p>17 Q. And in the segment that we were just</p> <p>18 listening to, you were asking CPI about these statements</p> <p>19 that the Vivint representative had made to you; is that</p> <p>20 fair?</p> <p>21 MR. HERBERT: Object to form.</p> <p>22 A. Yes.</p> <p>23 BY MR. HOBBS:</p> <p>24 Q. Do you know why you were calling CPI to ask</p> <p>25 those questions?</p>
<p style="text-align: right;">Page 35</p> <p>1 BY MR. HOBBS:</p> <p>2 Q. You can answer subject to those objections.</p> <p>3 A. Repeat your question. I just want to make</p> <p>4 sure I'm answering the right...</p> <p>5 Q. Sure. On the segment that we listened to,</p> <p>6 you were reporting to CPI that this Vivint sales</p> <p>7 representative had indicated to you that Vivint works</p> <p>8 with CPI. Did you hear that?</p> <p>9 A. Yes.</p> <p>10 MR. HERBERT: Object to form.</p> <p>11 BY MR. HOBBS:</p> <p>12 Q. As you listened to that specific portion, do</p> <p>13 you have any reason to dispute here today that that is,</p> <p>14 in fact, what the Vivint representative stated to you?</p> <p>15 MR. HERBERT: Object to form.</p> <p>16 A. I can't -- I cannot dispute that. That is --</p> <p>17 that is real in my impression.</p> <p>18 BY MR. HOBBS:</p> <p>19 Q. Okay. And it sounded like you were calling</p> <p>20 CPI to inquire about this visit. Is -- is that a fair</p> <p>21 characterization of what we've listened to so far?</p> <p>22 MR. HERBERT: Object to form.</p> <p>23 A. Yes.</p> <p>24 BY MR. HOBBS:</p> <p>25 Q. Do you, again, have any independent</p>	<p style="text-align: right;">Page 37</p> <p>1 MR. HERBERT: Object to form.</p> <p>2 A. This gentleman was suggesting I change --</p> <p>3 change companies from a company I had worked with for</p> <p>4 many, many years, and that he was also representing CPI,</p> <p>5 and it didn't make sense. So I was calling to ask that</p> <p>6 it -- can they help me make sense out of it. And</p> <p>7 obviously, years later, here they are.</p> <p>8 BY MR. HOBBS:</p> <p>9 Q. I'm going to play another minute-long segment</p> <p>10 of this. For the record, it's going to start at</p> <p>11 54 seconds. I'm going to play it for about an</p> <p>12 additional minute and then, Mr. Kodack, I'm going to ask</p> <p>13 you a couple additional questions subject to the</p> <p>14 standing objection.</p> <p>15 (Audio recording begins.)</p> <p>16 CPI REPRESENTATIVE: Okay. Verify your</p> <p>17 password for me, sir.</p> <p>18 CALLER: -- a moment.</p> <p>19 CPI REPRESENTATIVE: Okay. And he said he</p> <p>20 was from?</p> <p>21 CALLER: Vivint?</p> <p>22 CPI REPRESENTATIVE: Vivint?</p> <p>23 CALLER: Vivint. V-I-V-I-N-T, which is a</p> <p>24 competitor.</p> <p>25 CPI REPRESENTATIVE: Oh.</p>

<p style="text-align: right;">Page 38</p> <p>1 CALLER: And the -- you know --</p> <p>2 CPI REPRESENTATIVE: Vivint.</p> <p>3 CALLER: -- a competitor to you guys.</p> <p>4 CPI REPRESENTATIVE: Vivint, that's what it</p> <p>5 is. That's -- I was trying to see who it was.</p> <p>6 Yeah, no, he was not there with us at all.</p> <p>7 CALLER: Yeah.</p> <p>8 CPI REPRESENTATIVE: What they do is, they</p> <p>9 try to get you to sign with -- to, like, get</p> <p>10 something put in and then you end up signing their</p> <p>11 contract, and then you're locked in.</p> <p>12 CALLER: Okay. First question I asked him</p> <p>13 is, did he have a city permit to solicit like that.</p> <p>14 And I didn't know, and he never answered the</p> <p>15 question. And he says he wasn't selling anything,</p> <p>16 so.</p> <p>17 (Audio recording paused.)</p> <p>18 BY MR. HOBBS:</p> <p>19 Q. So I paused it, Mr. Kodack, at 1 minute and</p> <p>20 55 seconds. Were you able to hear that segment?</p> <p>21 MR. HERBERT: Let me -- I'm sorry. I'm going</p> <p>22 to interpose an objection and in particular move to</p> <p>23 strike the question and that portion of the -- of</p> <p>24 the exhibit that's containing hearsay.</p> <p>25 BY MR. HOBBS:</p>	<p style="text-align: right;">Page 40</p> <p>1 dialogue you had with the customer service agent?</p> <p>2 MR. HERBERT: And I'm sorry, Mr. Kodack. I</p> <p>3 need to interpose an objection that the question</p> <p>4 grossly mischaracterizes even the leading hearsay</p> <p>5 contained in the exhibit.</p> <p>6 BY MR. HOBBS:</p> <p>7 Q. Okay. I -- I don't want to misrepresent</p> <p>8 anything, Mr. Kodack. So I'm going to just back up the</p> <p>9 recording and play it one more time and then ask you a</p> <p>10 fresh question. But I'm going to back it up to</p> <p>11 55 seconds and play that -- that minute-long segment</p> <p>12 again.</p> <p>13 (Audio recording begins.)</p> <p>14 CPI REPRESENTATIVE: Okay. Verify your</p> <p>15 password for me, sir.</p> <p>16 CALLER: -- a moment.</p> <p>17 CPI REPRESENTATIVE: Okay. And he said he</p> <p>18 was from?</p> <p>19 CALLER: Vivint?</p> <p>20 CPI REPRESENTATIVE: Vivint?</p> <p>21 CALLER: Vivint. V-I-V-I-N-T, which is a</p> <p>22 competitor.</p> <p>23 CPI REPRESENTATIVE: Oh.</p> <p>24 CALLER: In the -- you know --</p> <p>25 CPI REPRESENTATIVE: Vivint.</p>
<p style="text-align: right;">Page 39</p> <p>1 Q. Mr. Kodack, were you able to hear that</p> <p>2 portion?</p> <p>3 A. Yes, I was.</p> <p>4 Q. Okay.</p> <p>5 A. It was consistent with what I just said to</p> <p>6 you --</p> <p>7 Q. Okay.</p> <p>8 A. -- a minute ago, not remembering this.</p> <p>9 Q. And --</p> <p>10 A. So --</p> <p>11 Q. -- by "consistent," are you referencing the</p> <p>12 fact of you mentioning on the call that you were asking</p> <p>13 about a permit?</p> <p>14 MR. HERBERT: Same objection.</p> <p>15 A. Yes. Yes.</p> <p>16 BY MR. HOBBS:</p> <p>17 Q. Did you hear the portion of the call where</p> <p>18 you're saying, I thought they were a competitor of</p> <p>19 yours, but he was saying that they work with CPI?</p> <p>20 MR. HERBERT: Object to form. I'm sorry, go</p> <p>21 ahead, Eric. I didn't know -- I thought you were</p> <p>22 finished.</p> <p>23 BY MR. HOBBS:</p> <p>24 Q. Did -- well, I'm going to ask about that</p> <p>25 specific statement, but do you recall being -- or that</p>	<p style="text-align: right;">Page 41</p> <p>1 CALLER: -- a competitor of you guys.</p> <p>2 CPI REPRESENTATIVE: Vivint, that's what it</p> <p>3 is. That's -- I was trying to see who it was.</p> <p>4 Yeah, no, he was not there with us at all.</p> <p>5 CALLER: Yeah.</p> <p>6 CPI REPRESENTATIVE: What they do is, they</p> <p>7 try to get you to sign with -- to, like, get</p> <p>8 something put in and then you end up signing their</p> <p>9 contract, and then you're locked in.</p> <p>10 CALLER: Okay. First question I asked him</p> <p>11 is, did he have a city permit to solicit like that.</p> <p>12 And I didn't know, and he never answered the</p> <p>13 question.</p> <p>14 (Audio recording paused.)</p> <p>15 BY MR. HOBBS:</p> <p>16 Q. So I've paused it at 1:51. Mr. Kodack, the</p> <p>17 portion I wanted to ask you about is, did you hear when</p> <p>18 you were indicating to the CPI representative that you</p> <p>19 were questioning whether Vivint was a competitor of CPI?</p> <p>20 MR. HERBERT: Same objection.</p> <p>21 A. Yes, I heard that.</p> <p>22 BY MR. HOBBS:</p> <p>23 Q. And do you know why you were asking CPI's</p> <p>24 customer service representative that question?</p> <p>25 MR. HERBERT: Object to form, foundation.</p>

<p style="text-align: right;">Page 42</p> <p>1 A. The sales representative made suggestions 2 that they were affiliated with or working with CPI. 3 BY MR. HOBBS: 4 Q. What I'm going to do now is, I'm going to 5 play the remainder of the recording from 1:51 through 6 5 minutes and 43 seconds. And Mr. Kodack, I apologize. 7 It's going to be a lengthy segment here, but I want to 8 ask you a couple questions after we do that. 9 (Audio recording begins.) 10 CALLER: And he says he wasn't selling 11 anything, so. Somebody else will come around 12 selling something, he said. So I -- I just brushed 13 him off, but I didn't know whether you were aware in 14 this neighborhood this is what's going on. 15 CPI REPRESENTATIVE: We -- I don't know if 16 the other reps. I'm going to escalate up to our 17 management team, letting them know that there's -- 18 that he's going around portraying he's working with 19 us, because they can't do that. I mean, that's 20 illegal -- 21 CALLER: Yeah. 22 CPI REPRESENTATIVE: -- misrepresentation 23 and -- 24 CALLER: Yeah, by all means. That's the 25 reason why I called you guys to say, hey.</p>	<p style="text-align: right;">Page 44</p> <p>1 CALLER: Okay. 2 CPI REPRESENTATIVE: But our employees 3 always -- they normally have a CPI shirt on and come 4 up in a CPI vehicle. 5 CALLER: And he didn't. 6 CPI REPRESENTATIVE: Yeah, but they always 7 have a badge on them. 8 CALLER: Yeah. Yeah. 9 CPI REPRESENTATIVE: Everybody. 10 CALLER: And -- and the gentleman who came to 11 the house identified himself and came in to do the 12 work and did so beautifully. 13 CPI REPRESENTATIVE: Yeah. We definitely -- 14 I'll go ahead and escalate. Like I said, we really 15 appreciate you letting us know. 16 CALLER: Yes. 17 CPI REPRESENTATIVE: And I'm going to send -- 18 CALLER: I just don't like that sort of 19 stuff. 20 CPI REPRESENTATIVE: No, that's just -- 21 CALLER: I don't like that sort of stuff 22 when -- 23 CPI REPRESENTATIVE: That's -- 24 CALLER: -- when -- 25 CPI REPRESENTATIVE: That's low --</p>
<p style="text-align: right;">Page 43</p> <p>1 CPI REPRESENTATIVE: Yeah. 2 CALLER: We've been with you a week or three. 3 CPI REPRESENTATIVE: Yeah. 4 CALLER: Like you're... 5 CPI REPRESENTATIVE: And -- 6 CALLER: As soon as they put in the system in 7 this house, we switched over to you guys. I've been 8 with you for all along, and we have upgraded once to 9 the cell phone technology, and that's all we've ever 10 done with it. We just had a service this last week, 11 and he came out and repaired a door switch. 12 CPI REPRESENTATIVE: Okay. I'm going to -- 13 wait one second. 14 All right. I'm going to go ahead and send 15 this off to my management team so they can get on 16 top of this. We definitely appreciate you calling 17 us. We want to let you know that anytime somebody 18 comes to your home from CPI Security, no matter if 19 it's a sales rep like you said working the 20 neighborhood, they will always have a CPI badge on 21 with an employee number on it. You ask to see that 22 badge, and you can always verify. If you go to 23 CPIsecurity.com, it will have employee verification, 24 and you can put in that employee number and it will 25 tell you if they're with this company or not.</p>	<p style="text-align: right;">Page 45</p> <p>1 CALLER: Yeah. 2 CPI REPRESENTATIVE: -- to do that. 3 CALLER: That's low. And, yeah, I'm very 4 pleased with what CPI has offered me over the years. 5 And it's -- you know, it works. Your sign works. 6 CPI REPRESENTATIVE: Oh, thank you. We 7 appreciate it, sir. And thank you for calling us 8 and making us aware. 9 CALLER: Okay. Thank you. And will you 10 communicate with me in some way and let me know 11 what's happened? 12 CPI REPRESENTATIVE: Our management team will 13 probably reach out to you. 14 CALLER: Okay. 15 CPI REPRESENTATIVE: I'm -- like I said, I'm 16 going to send them on now and let them know, and 17 then they will probably reach out. I will tell 18 them. 19 CALLER: All right. Thank you. I just -- 20 you know, it just completes the circle. 21 CPI REPRESENTATIVE: Okay. 22 CALLER: Thank you. You have a good 23 afternoon. 24 CPI REPRESENTATIVE: All right. Thank you. 25 Have a good day. Bye-bye.</p>


<p style="text-align: right;">Page 46</p> <p>1 (Audio recording end.)</p> <p>2 BY MR. HOBBS:</p> <p>3 Q. So Mr. Kodack, were you able to hear the</p> <p>4 remainder of that recording as I played it?</p> <p>5 MR. HERBERT: Mr. Kodack, I'm sorry, I'm</p> <p>6 going to interpose an objection. Again, repeat my</p> <p>7 prior objection and move to strike the use of that</p> <p>8 clip, that sound clip as leading and misleading,</p> <p>9 containing hearsay and improper foundation, and</p> <p>10 object to the form of any questions related to it.</p> <p>11 BY MR. HOBBS:</p> <p>12 Q. Mr. Kodack, I'll reask the question subject</p> <p>13 to those objections. Were you able to hear the</p> <p>14 remainder of that recording as I played it?</p> <p>15 A. Yes, I was.</p> <p>16 Q. Okay. Do you mind just getting a little bit</p> <p>17 closer to the microphone --</p> <p>18 A. Okay.</p> <p>19 Q. -- on your computer? Very good.</p> <p>20 A. Yes, I did.</p> <p>21 Q. I'm going to ask the same question I -- I</p> <p>22 asked a few minutes ago. Does listening to the</p> <p>23 remainder of this recording, does that refresh your</p> <p>24 memory sitting here today as to the call that you made</p> <p>25 to CPI?</p>	<p style="text-align: right;">Page 48</p> <p>1 (Whereupon, the following question was read:</p> <p>2 I appreciate that, but my follow-up question</p> <p>3 would be, then, as you listened to what I played, do</p> <p>4 you have any reason to doubt what you relayed to CPI</p> <p>5 on this call is, in fact, what happened to you when</p> <p>6 you interacted with this representative from</p> <p>7 Vivint?)</p> <p>8 MR. HERBERT: Same objection.</p> <p>9 A. I have no reason to doubt the veracity of</p> <p>10 that recording.</p> <p>11 BY MR. HOBBS:</p> <p>12 Q. On the segment that we listened to, you</p> <p>13 stated that you had been very pleased with CPI. Do you</p> <p>14 remember hearing that as I played it?</p> <p>15 A. Yes.</p> <p>16 MR. HERBERT: Same objection.</p> <p>17 BY MR. HOBBS:</p> <p>18 Q. And were you interested at this time in</p> <p>19 making a switch in your alarm services provider?</p> <p>20 A. No, I was not interested in switching.</p> <p>21 Q. Did the fact of the Vivint sales</p> <p>22 representative stating he -- that Vivint worked with</p> <p>23 CPI, did that cause you to question whether you needed</p> <p>24 to make a change to your alarm system?</p> <p>25 MR. HERBERT: Object to form. The witness</p>
<p style="text-align: right;">Page 47</p> <p>1 MR. HERBERT: Same objections.</p> <p>2 A. It is consistent with my demeanor and the</p> <p>3 kinds of inserts I put in as we went through it. I</p> <p>4 don't specifically remember this call.</p> <p>5 BY MR. HOBBS:</p> <p>6 Q. Okay.</p> <p>7 A. I've done this with Duke Power and a few</p> <p>8 others from time to time when salesmen hit the</p> <p>9 neighborhood, and I very consistently ask them the same</p> <p>10 kinds of questions.</p> <p>11 Q. I appreciate that, but my follow-up question</p> <p>12 would be, then, as you listened to what I played, do you</p> <p>13 have any reason to doubt what you relayed to CPI on this</p> <p>14 call is, in fact, what happened to you when you</p> <p>15 interacted with this representative from Vivint?</p> <p>16 MR. HERBERT: Same objection. And also</p> <p>17 object that the question has been asked and answered</p> <p>18 a couple times now.</p> <p>19 A. Repeat your question.</p> <p>20 Q. You can answer.</p> <p>21 MR. HOBBS: Could I have the court reporter</p> <p>22 please read the question back, subject to the</p> <p>23 objection?</p> <p>24 And you're on mute, sorry.</p> <p>25 THE COURT REPORTER: Thank you.</p>	<p style="text-align: right;">Page 49</p> <p>1 has already testified he doesn't remember.</p> <p>2 A. No, it would not be -- I would not have</p> <p>3 considered it. And to that extent, I called CPI to make</p> <p>4 sure that they hadn't sold out to somebody.</p> <p>5 BY MR. HOBBS:</p> <p>6 Q. And I assume you were calling CPI because you</p> <p>7 didn't know the answer to that question?</p> <p>8 MR. HERBERT: Object to form.</p> <p>9 A. Correct.</p> <p>10 BY MR. HOBBS:</p> <p>11 Q. I -- I know memory can be a tough thing,</p> <p>12 Mr. Kodack, but let me generally ask. You've testified</p> <p>13 that you're in your early 70s. Do you have any general</p> <p>14 memory issues?</p> <p>15 A. No, I do not. I've stayed pretty clear, and</p> <p>16 even kind of pre-knew what the recording was going to do</p> <p>17 even though I didn't have specific memory of that call.</p> <p>18 I'm pretty consistent.</p> <p>19 Q. Now, I -- I know you don't specifically</p> <p>20 recall making this phone call to CPI. I -- I just have</p> <p>21 to ask. Do you recall contacting any other party,</p> <p>22 whether it be Vivint or a third party, about this</p> <p>23 interaction?</p> <p>24 A. No, I do not recall any other. To me, this</p> <p>25 was the end of the line from my needs standpoint.</p>

<p style="text-align: right;">Page 50</p> <p>1 Nothing changed on my CPI. It's there. It's there now.</p> <p>2 Q. And let me ask. I know you've testified as</p> <p>3 to your memory, but if I represented to you that CPI's</p> <p>4 records show that this call was received on July 14th of</p> <p>5 2018, does that refresh your recollection as to when you</p> <p>6 had an interaction with the Vivint sales representative?</p> <p>7 MR. HERBERT: Object to form. Same objection</p> <p>8 as prior objection, standing objection.</p> <p>9 A. I don't -- I don't specifically recall the</p> <p>10 particular date as being noteworthy. Obviously, I -- it</p> <p>11 was consistent with a salesman at my door. Even the</p> <p>12 timestamp on it would probably tell you the time of day,</p> <p>13 because knowing my consistency, I would have called CPI</p> <p>14 immediately and said, is this for real?</p> <p>15 BY MR. HOBBS:</p> <p>16 Q. Understood. And that's why I -- I just want</p> <p>17 to ask a slightly different question, is if CPI's</p> <p>18 records reflect that they received this call from you on</p> <p>19 July 14th of 2018, would you have any reason sitting</p> <p>20 here today to dispute that?</p> <p>21 MR. HERBERT: Same objection.</p> <p>22 A. I would not.</p> <p>23 MR. HOBBS: Okay. Mr. Kodack, those are the</p> <p>24 only questions I have for now. Just as a</p> <p>25 housekeeping matter, I have played the audio</p>	<p style="text-align: right;">Page 52</p> <p>1 Q. All right. And you've paid your monthly</p> <p>2 payment to them every month during that time period,</p> <p>3 right?</p> <p>4 A. Yes, indeed.</p> <p>5 Q. So nothing that you testified about today at</p> <p>6 all persuaded you to do business with Vivint, right?</p> <p>7 A. Correct.</p> <p>8 Q. And nothing that you testified about today</p> <p>9 changed your opinion of CPI; is that a fair statement?</p> <p>10 A. Yes, that is a fair statement.</p> <p>11 Q. You didn't discontinue your contract with CPI</p> <p>12 as a result of anything you testified about today,</p> <p>13 right?</p> <p>14 A. No, I did not.</p> <p>15 Q. Yeah, and in fact, at some point over the</p> <p>16 lifespan of your agreement with CPI, you agreed to have</p> <p>17 them upgrade your system at least once, and I think you</p> <p>18 said twice; is that right?</p> <p>19 A. Yes, indeed. Two separate instances going to</p> <p>20 the cell phone connection, which I thought was a great</p> <p>21 deal safer than the landline, and B, going to upgrade</p> <p>22 the cell phone when that was -- when that version of</p> <p>23 cell phone was retired.</p> <p>24 Q. Right. And one of those upgrades occurred, I</p> <p>25 believe you said it was in February of 2020; is that</p>
<p style="text-align: right;">Page 51</p> <p>1 recording Bates labeled as CPI 54 and designated it</p> <p>2 as Exhibit 3. I am going to mark it as Exhibit 3</p> <p>3 and place it in our marked exhibit folder now. And</p> <p>4 with that, Mr. Kodack, Mr. Herbert is going to have</p> <p>5 an opportunity to ask you some questions on behalf</p> <p>6 of Vivint.</p> <p>7 (Whereupon, Exhibit 3 was marked for</p> <p>8 identification.)</p> <p>9 MR. HERBERT: Thank you, Mr. Hobbs.</p> <p>10 EXAMINATION</p> <p>11 BY MR. HERBERT:</p> <p>12 Q. Good afternoon, Mr. Kodack.</p> <p>13 A. Good afternoon.</p> <p>14 Q. My name is Greg Herbert and, as I mentioned</p> <p>15 earlier, I am one of the attorneys representing Vivint</p> <p>16 in this lawsuit that CPI has brought. First question I</p> <p>17 want to ask you is, just so we're clear, you and your</p> <p>18 family who live with you, none of you have ever spent \$1</p> <p>19 with Vivint at any point in your life that you're aware</p> <p>20 of, right?</p> <p>21 A. Correct.</p> <p>22 Q. Okay. And you continue your service with</p> <p>23 CPI; you've continuously been a customer of CPI since</p> <p>24 January of 2003, correct?</p> <p>25 A. Correct.</p>	<p style="text-align: right;">Page 53</p> <p>1 right?</p> <p>2 A. Yes, indeed.</p> <p>3 Q. So I want to ask you some additional</p> <p>4 questions about what you may or may not recall about</p> <p>5 anything you testified about earlier today. From --</p> <p>6 from your testimony, it sounds to me that as you sit</p> <p>7 here today and testify under oath, you cannot</p> <p>8 specifically recall any conversation you might have had</p> <p>9 or might not have had with a sales representative</p> <p>10 identifying himself as being from Vivint; is that a fair</p> <p>11 statement?</p> <p>12 A. That is a fair statement that I don't have</p> <p>13 any direct recall of that.</p> <p>14 Q. Okay.</p> <p>15 A. Or spontaneous recall of that.</p> <p>16 Q. So you -- you couldn't testify as to, if you</p> <p>17 did have such an interaction with a Vivint sales rep,</p> <p>18 you couldn't testify as to what he looked like, how tall</p> <p>19 he was, what color hair he had, things like that, right?</p> <p>20 A. Yeah, I have no recall of any description. I</p> <p>21 might have immediately after that, but not just -- it</p> <p>22 was a non-descript salesman to me.</p> <p>23 Q. Okay. And you don't recall whether or not</p> <p>24 that person, if you did have such an interaction, was</p> <p>25 wearing a hat or a name tag or a shirt that identified</p>

<p style="text-align: right;">Page 54</p> <p>1 himself with any particular company?</p> <p>2 A. No, I do not recall that at all.</p> <p>3 Q. Okay. And I assume the same would be true</p> <p>4 for whether or not that person had a -- had a car with</p> <p>5 a -- with a logo or a company magnet or label on it?</p> <p>6 A. No, I -- I do not have that information in my</p> <p>7 store now.</p> <p>8 Q. And I also assume it's true that you can't</p> <p>9 recall how long a span of time passed from any</p> <p>10 interaction that you might have had and the phone call</p> <p>11 that you testified about when Mr. Hobbs was -- was</p> <p>12 questioning you; is that a fair statement?</p> <p>13 A. My consistent pattern is to follow up</p> <p>14 immediately, but other than that, no. No specific. I</p> <p>15 can't say so many minutes and so many seconds after he</p> <p>16 left. But my tendency is, that's a little strange,</p> <p>17 dear. I'm going to follow up on it.</p> <p>18 Q. All right. So that's your -- that's your</p> <p>19 normal course and conduct --</p> <p>20 A. Yeah.</p> <p>21 Q. -- but as you sit here today testifying under</p> <p>22 oath, you cannot say that definitely you called the same</p> <p>23 day or the next day or -- or what the span of time was,</p> <p>24 right?</p> <p>25 A. No, I don't -- and we -- I wasn't given a</p>	<p style="text-align: right;">Page 56</p> <p>1 court, Mr. Kodack, can you tell me from your independent</p> <p>2 recollection anything that this sales representative</p> <p>3 might have said to you on that day?</p> <p>4 A. No.</p> <p>5 Q. And it sounds like you clearly understand</p> <p>6 that Vivint and CPI are two companies that compete</p> <p>7 against each other. Is that a fair statement?</p> <p>8 A. Or with --</p> <p>9 MR. HOBBS: Object to form.</p> <p>10 BY MR. HERBERT:</p> <p>11 Q. I'm sorry. I couldn't hear your answer,</p> <p>12 Mr. Kodack.</p> <p>13 A. With each other rather than against each</p> <p>14 other.</p> <p>15 Q. Good -- good point. Good point. You must</p> <p>16 have been an English major or taken some --</p> <p>17 A. No, no, I'm just consistent on English</p> <p>18 language. Just my own personal bug. I've corrected too</p> <p>19 many papers and research documents and stuff like that</p> <p>20 for -- for language. And I -- I call people on it.</p> <p>21 Q. Well, I'm happy to be called out. I was an</p> <p>22 English major myself, and I -- I have to resist the</p> <p>23 temptation to do that with folks because I like to do</p> <p>24 that, and there's a lot of -- lot of bad grammar and</p> <p>25 usage out there today, so no problem. Feel free to</p>
<p style="text-align: right;">Page 55</p> <p>1 timestamp on when that call came in. I'm sure at some</p> <p>2 point in time it was timestamped, the particular call</p> <p>3 that was recorded.</p> <p>4 Q. Okay. So in terms of, you know, the -- the</p> <p>5 possible interaction with the sales rep, as you sit here</p> <p>6 today, you cannot testify under oath about any</p> <p>7 particular statement that that sales representative made</p> <p>8 because you don't remember any interaction; is that a</p> <p>9 fair statement?</p> <p>10 A. Yes, but it is consistent with the way I</p> <p>11 question all salesmen at my door. So the consistency is</p> <p>12 there, but the specific memory of this particular</p> <p>13 salesman in this particular incident is not recognized.</p> <p>14 Q. Understood, understood. So to put it in a</p> <p>15 simpler way, if I were to ask you, Mr. -- Mr. Kodack,</p> <p>16 can you testify under oath, can you tell me something</p> <p>17 that this Vivint sales rep said to you in this</p> <p>18 interaction that -- that might have happened, could you</p> <p>19 answer that question?</p> <p>20 A. No.</p> <p>21 Q. Let me rephrase that -- that was a "no"?</p> <p>22 A. Yeah. I was sitting here trying to figure</p> <p>23 out what -- how I -- how I answer that, yeah.</p> <p>24 Q. That was not a well-phrased question. I ask</p> <p>25 you, recognizing that you're testifying as if you're in</p>	<p style="text-align: right;">Page 57</p> <p>1 correct me if I ever --</p> <p>2 A. Oh, no. No, I just wanted to be -- did you</p> <p>3 mean what I was saying rather than what you were saying.</p> <p>4 Q. 100 percent. I wanted to make sure you --</p> <p>5 you understand my meaning. So thank you.</p> <p>6 I'm just going to look through my notes. I</p> <p>7 don't think I might have any questions. Just give me</p> <p>8 one minute, and I will see if we can wrap this up.</p> <p>9 Let me ask you one -- one last set of</p> <p>10 questions. And that is, did you happen to hear about</p> <p>11 some controversial comments that were made by CPI's CEO,</p> <p>12 a gentleman by the name of Ken Gill, last summer</p> <p>13 regarding the Black Lives Matter movement?</p> <p>14 A. No, I have not heard. I didn't even know who</p> <p>15 Ken Gill was. Thank you for telling me.</p> <p>16 Q. Okay. Let me ask you. Did you happen to</p> <p>17 hear anything in the news about some North Carolina</p> <p>18 sports teams or other businesses terminating the</p> <p>19 relationship with CPI because of this controversy?</p> <p>20 A. No.</p> <p>21 Q. Okay. Are you -- are you a football or</p> <p>22 basketball fan at all?</p> <p>23 A. No, not much of one. I'm not particularly a</p> <p>24 sports nut.</p> <p>25 Q. You may be the only Duke graduate who is not</p>

<p style="text-align: right;">Page 58</p> <p>1 a basketball fan that I've ever met, so.</p> <p>2 A. Oh, well, hey, it's -- talk about science,</p> <p>3 yes, I'll be perfectly willing to cheer your team on,</p> <p>4 but not...</p> <p>5 MR. HERBERT: I got it. All right. I don't</p> <p>6 believe I have any further questions. And I'll tell</p> <p>7 you that if Mr. Hobbs -- he might ask you a couple</p> <p>8 follow-ups. It's possible I might have a follow-up</p> <p>9 or two after that. Okay. So I just wanted to give</p> <p>10 you a fair warning.</p> <p>11 THE WITNESS: Yeah, thank you.</p> <p>12 MR. HERBERT: Thank you.</p> <p>13 MR. HOBBS: Mr. Kodack, I have just a couple</p> <p>14 very brief questions.</p> <p>15 EXAMINATION</p> <p>16 BY MR. HOBBS:</p> <p>17 Q. Mr. Herbert asked you about your independent</p> <p>18 recollection and memory sitting here today, and that's a</p> <p>19 topic we've both asked some questions about. In</p> <p>20 follow-up to that, would you agree that the phone call</p> <p>21 we have listened to that you made to CPI would have been</p> <p>22 closer in time to the interaction you had with this</p> <p>23 Vivint representative than now?</p> <p>24 MR. HERBERT: Object to form.</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 60</p> <p>1 questions I have for you today.</p> <p>2 MR. HERBERT: All right. Mr. Kodack, I just</p> <p>3 want to clarify something that you just said.</p> <p>4 EXAMINATION</p> <p>5 BY MR. HERBERT:</p> <p>6 Q. You were testifying about some things you</p> <p>7 heard in a phone call, right, not about any independent</p> <p>8 recollection of an actual conversation but --</p> <p>9 A. That's right.</p> <p>10 Q. -- somebody -- okay.</p> <p>11 A. And -- and my own general consistency with</p> <p>12 the timing of a phone call to a company concerning a</p> <p>13 representation from that company -- of that company.</p> <p>14 And I wanted to make sure that, am I still with you</p> <p>15 guys?</p> <p>16 Q. I understand. And you -- you recall that --</p> <p>17 A. Not specifically this one, but it is my</p> <p>18 consistent pattern.</p> <p>19 MR. HERBERT: Okay. All right. I don't have</p> <p>20 any further questions. Thank you very much,</p> <p>21 Mr. Kodack.</p> <p>22 THE WITNESS: Thank you.</p> <p>23 MR. HOBBS: Let's go ahead and go off the</p> <p>24 record.</p> <p>25 THE VIDEOGRAPHER: The time is 2:27 p.m.</p>
<p style="text-align: right;">Page 59</p> <p>1 BY MR. HOBBS:</p> <p>2 Q. Would your memory have been fresher at that</p> <p>3 time of that -- of the incident or of the interaction</p> <p>4 you had with the Vivint representative?</p> <p>5 MR. HERBERT: Object to form.</p> <p>6 A. I'm sure -- I'm sure it would have. My</p> <p>7 tendency is, is to follow up on those things, to consult</p> <p>8 with my partner and then to make the phone call</p> <p>9 immediately. Because it's what's confronting me right</p> <p>10 then, and if you can clear it up, let's clear it up.</p> <p>11 The -- it sounded a little funny and a little fishy, and</p> <p>12 I didn't -- I wanted to reaffirm our relationship with</p> <p>13 CPI.</p> <p>14 BY MR. HOBBS:</p> <p>15 Q. And what sounded funny or fishy?</p> <p>16 MR. HERBERT: Object to form.</p> <p>17 A. Just that he said that --</p> <p>18 (Phone ringing.)</p> <p>19 A. Just a second.</p> <p>20 What sounded a little bit fishy was his</p> <p>21 saying that he worked or -- with CPI. I don't recall</p> <p>22 whether he was identified as a Vivint employee, but that</p> <p>23 he worked with CPI as well didn't quite gel.</p> <p>24 MR. HOBBS: Okay. Mr. Kodack, unless</p> <p>25 Mr. Herbert has anything else, those are the only</p>	<p style="text-align: right;">Page 61</p> <p>1 We're off the record.</p> <p>2 (DEPOSITION CONCLUDED AT 2:27 P.M.)</p> <p>3 (SIGNATURE RESERVED)</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>



<p style="text-align: right;">Page 62</p> <p>1 STATE OF NORTH CAROLINA</p> <p>2 COUNTY OF FORSYTH:</p> <p>3</p> <p>4 REPORTER'S CERTIFICATE</p> <p>5</p> <p>6 I, LAUREN McINTEE, RPR, CRR, a Notary Public</p> <p>7 in and for the State of North Carolina, located in</p> <p>8 Forsyth County, North Carolina, do hereby certify that</p> <p>9 there appeared remotely on Wednesday, the 25th day of</p> <p>10 August, 2021, the person hereinbefore named located in</p> <p>11 Durham County, North Carolina, who was by me duly sworn</p> <p>12 to testify to the truth and nothing but the truth of his</p> <p>13 knowledge concerning the matters in controversy in this</p> <p>14 cause; that the witness was thereupon examined under</p> <p>15 oath, the examination reduced to typewriting under my</p> <p>16 direction, and the deposition is a true record of the</p> <p>17 testimony given by the witness.</p> <p>18 I further certify that I am neither attorney</p> <p>19 or counsel for, nor related to or employed by, any</p> <p>20 attorney or counsel employed by the parties hereto or</p> <p>21 financially interested in the action.</p> <p>22 I signed this notarial certificate on 31st</p> <p>23 day of August, 2021, according to the emergency video</p> <p>24 notarization requirements contained in G.S. 10B-25.</p> <p>25 IN WITNESS WHEREOF, I have hereto set my</p>	<p style="text-align: right;">Page 64</p> <p>1 Lawrence Kodack</p> <p>2 Lawrencekodack@gmail.com</p> <p>3 August 31, 2021</p> <p>4 RE: CPI Security Systems, Inc, v. Vivint Smart Home, Inc.</p> <p>5 8/25/2021, Lawrence Kodack (#4771270)</p> <p>6 The above-referenced transcript is available for</p> <p>7 review.</p> <p>8 Within the applicable timeframe, the witness should</p> <p>9 read the testimony to verify its accuracy. If there are</p> <p>10 any changes, the witness should note those with the</p> <p>11 reason, on the attached Errata Sheet.</p> <p>12 The witness should sign the Acknowledgment of</p> <p>13 Deponent and Errata and return to the deposing attorney.</p> <p>14 Copies should be sent to all counsel, and to Veritext at</p> <p>15 erratas-cs@veritext.com</p> <p>16</p> <p>17 Return completed errata within 30 days from</p> <p>18 receipt of testimony.</p> <p>19 If the witness fails to do so within the time</p> <p>20 allotted, the transcript may be used as if signed.</p> <p>21</p> <p>22 Yours,</p> <p>23 Veritext Legal Solutions</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 63</p> <p>1 hand, this the 31st day of August, 2021.</p> <p>2</p> <p>3</p> <p>4 </p> <p>5 LAUREN McINTEE, RPR, CRR Notary Public</p> <p>6 Notary Number: 201616600044</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 65</p> <p>1 CPI Security Systems, Inc, v. Vivint Smart Home, Inc.</p> <p>2 Lawrence Kodack (#4771270)</p> <p>3 E R R A T A S H E E T</p> <p>4 PAGE____ LINE____ CHANGE____</p> <p>5 _____</p> <p>6 REASON_____</p> <p>7 PAGE____ LINE____ CHANGE____</p> <p>8 _____</p> <p>9 REASON_____</p> <p>10 PAGE____ LINE____ CHANGE____</p> <p>11 _____</p> <p>12 REASON_____</p> <p>13 PAGE____ LINE____ CHANGE____</p> <p>14 _____</p> <p>15 REASON_____</p> <p>16 PAGE____ LINE____ CHANGE____</p> <p>17 _____</p> <p>18 REASON_____</p> <p>19 PAGE____ LINE____ CHANGE____</p> <p>20 _____</p> <p>21 REASON_____</p> <p>22 _____</p> <p>23 _____</p> <p>24 Lawrence Kodack Date</p> <p>25</p>

1 CPI Security Systems, Inc, v. Vivint Smart Home, Inc.

2 Lawrence Kodack (#4771270)

3 ACKNOWLEDGEMENT OF DEPONENT

4 I, Lawrence Kodack, do hereby declare that I

5 have read the foregoing transcript, I have made any

6 corrections, additions, or changes I deemed necessary as

7 noted above to be appended hereto, and that the same is

8 a true, correct and complete transcript of the testimony

9 given by me.

10

11 \_\_\_\_\_

12 Lawrence Kodack Date

13 \*If notary is required

14 SUBSCRIBED AND SWORN TO BEFORE ME THIS

15 \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_.

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18 \_\_\_\_\_

19 NOTARY PUBLIC

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<b>&amp;</b>	<b>2019</b> 9:25	<b>5/8/2010</b> 17:11	<b>actual</b> 60:8
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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS  
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted fashion to authenticated parties who are permitted to access the material. Our data is hosted in a Tier 4 SSAE 16 certified facility.

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